
**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**PERVIS EVERETT, TONISHA
JOHNSON, THALIA OUTLAW, LARRY
ALLEN, TERRY LATTIMORE,
DERRICK GUYTON, WILLIE BRENT,
ERNEST LEFFEW, THOMAS
ALSOBROOKS on behalf of themselves
and others similarly situated, and
DISABILITY RIGHTS MISSISSIPPI**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:21-cv-516-CWR-LGI

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS, NATHAN “BURL”
CAIN, in his official capacity as
Commissioner of the Mississippi
Department of Corrections, JEWORSKI
MALLET, in his official capacity as
Deputy Commissioner of Institutions,
TIMOTHY DONOVAN, in his official
capacity as Interim Chief Medical Officer,
VITALCORE HEALTH STRATEGIES,
LLC, JOHN & JANE DOE
DEFENDANTS, and XYZ
CORPORATIONS**

DEFENDANTS

PLAINTIFFS’ MOTION FOR LEAVE TO AMEND COMPLAINT

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Local Rule 15, and the Court’s Class Certification Scheduling Order (Dkt. No. 61), Plaintiffs respectfully submit this Motion for Leave to File its Second Amended Complaint and submit to the Court as follows:

1. This class action litigation was filed on August 9, 2021 (Dkt. No. 1) to address the ongoing issues across the Mississippi Department of Corrections (“MDOC”) with regards to mental health and medical care as well as structural and physical inaccessibility pursuant to the Americans with Disabilities Act (“ADA”).

2. On July 27, 2022, Defendant, MDOC, along with other MDOC Defendants filed a Motion to Dismiss (Dkt. Nos. 23–24) which was two-fold. First, MDOC Defendants outlined four named Defendants who were no longer in MDOC custody. Lacrita Summerlin, Roger Havens, Anthony Lowenstein, and Peggy Starns. Additionally, MDOC Defendants filed a Suggestion of Death with regards to named plaintiff, Jeannie Mathis, as she died while in MDOC custody. Second, MDOC Defendants addressed issues with the retaliation claim alleged in Plaintiffs’ original complaint.
3. On August 25, 2022, Plaintiffs filed its First Amended Complaint (“FAC”) (Dkt. No. 28) following the Court’s approval of their Motion to Amend. Plaintiffs removed named plaintiffs who are no longer in MDOC custody. As mentioned in MDOC Defendants’ Motion to Dismiss, the four named plaintiffs, Lacrita Summerlin, Roger Havens, Anthony Lowenstein, and Peggy Starns, were removed from the FAC. Plaintiffs also removed Jeannie Mathis, who died while in custody. Plaintiffs also voluntarily removed their retaliation claim.
4. On September 8, 2022, MDOC Defendants moved for partial judgment on the pleadings (Dkt. Nos. 32–33) relating to named plaintiffs Bobby Henderson and Justin Hill’s inadequate medical and mental health care claims on the basis that they were precluded by both res judicata, or claim preclusion, and collateral estoppel, or issue preclusion. On November 18, 2022, the Court entered an order denying MDOC Defendants’ motion for partial judgment on the pleadings (Dkt. No. 41).
5. In their proposed Second Amended Complaint (“SAC”), Plaintiffs voluntarily remove all claims and allegations associated with mental healthcare and propose the following class and subclasses:

- a. Plaintiff Class: A class consisting of all people in MDOC custody who are, or will be in the future, housed in Central Mississippi Correctional Facility, Delta Correctional Facility, Marshall County Correctional Facility, Mississippi Correctional Institute for Women, Mississippi State Penitentiary, South Mississippi Correctional Institution, and Walnut Grove Correctional Facility.
 - b. Subclass of People with Chronic Conditions: A subclass consisting of all people who are currently in MDOC custody, or will be in the future, with a chronic condition.
 - c. Subclass of People with Physical Disabilities: A subclass consisting of all people who are currently in MDOC custody, or will be in the future, with a physical disability that qualifies as a “disability” as defined under the Americans with Disabilities Act, 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(B).
6. Plaintiffs also remove named plaintiffs who have either been discharged or are deceased, and therefore, no longer in MDOC custody. Such named plaintiffs include: Eric Wallace, Steven Miller, Jimmy Nanney, Keith O’Brien, Sylvia Smith, Melissa Adams, and Ida Weaver.¹ Plaintiffs also remove and replace certain named plaintiffs with others who Plaintiffs believe better fit within the proposed class and/or subclasses.
 7. Lastly, Plaintiffs replace Defendant Donald Faucett with Timothy Donovan, in his official capacity as Interim Chief Medical Officer.
 8. Prior to the filing of this Motion, Plaintiffs informed MDOC Defendants of its intent to amend the FAC. Defendants have notified Plaintiffs that they cannot take any position regarding this Motion until Defendants have had a chance to review the SAC.

¹ MDOC Defendants filed a Suggestion of Death for Ida Weaver (Dkt. No. 30) as she died while in MDOC custody.

FOR THESE REASONS, Plaintiffs respectfully request that the Court grant this Motion for Leave to Amend and allow the filing of the SAC.

RESPECTFULLY SUBMITTED, the 2nd day of February, 2024.

DISABILITY RIGHTS MISSISSIPPI
ATTORNEY FOR ALL PLAINTIFFS

/s/ 

Greta Kemp Martin, MSB#103672
5 Old River Place, Suite 101
Jackson, Mississippi 39202
Telephone: (601) 968-0600
Facsimile: (601) 968-0665
gmartin@drms.ms

PROSKAUER ROSE LLP
Margaret Ukwu (admitted *pro hac vice*)
2029 Century Park East, Suite 2400
Los Angeles, California 90067
Telephone: (310) 284-4586
Facsimile: (310) 557-2193
mukwu@proskauer.com

Yena Hong (admitted *pro hac vice*)
11 Times Square
New York, New York 10036
Telephone: (212) 969-3258
Facsimile: (212) 969-2900
yhong@proskauer.com

CERTIFICATE OF SERVICE

I, undersigned counsel of record, do hereby certify that a true and correct copy of the foregoing has been filed with this Court's electronic filing system which automatically sends notification to all attorneys of record.

DATED: February 2, 2024

/s/ 

Greta Kemp Martin, MSB#103672
5 Old River Place, Suite 101
Jackson, Mississippi 39202
Telephone: (601) 968-0600
Facsimile: (601) 968-0665
gmartin@drms.ms